

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15522
[Redacted])	
)	DECISION
Petitioners.)	
)	
_____)	

On March 15, 2001, the Income Tax Audit Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers), proposing income tax and interest for the year 1998, in the total amount of \$62.

On April 1, 2001, a timely protest and petition for redetermination was filed by the taxpayers. Then Mr. [Redacted] requested a telephone conference in his letter dated June 1, 2001, and also stated that there was a relatively small amount of tax in this case and it was certainly not worth the time to meet for a hearing. No telephone conference or hearing was held. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NODD.

The Income Tax Audit Bureau of the Commission issued a Notice of Deficiency Determination to the taxpayers [Redacted]. In the explanation of items, the Commission's Senior Tax Auditor (auditor) stated:

There was an error on your Idaho form CG. The amount on line 3 was doubled. The correct capital gain is as follows:

Qualifying capital gain (corrected)	\$30,960	
60% of the above amount	18,576	
Deduction claimed	20,220	
Deduction allowed	<u>18,576</u>	
Adjustment	\$ 1,644	

We find that the auditor correctly recomputed the taxpayers' tax liability.

A protest letter was sent by [Redacted] (Mr. [Redacted]) dated April 2, 2001, in which he stated:

I used \$33,700 on my Idaho form CG line 5 as the qualifying capital gain from partnerships for Idaho. Apparently you think that figure is incorrect and ought to be \$30,960, which is the amount of capital gain claimed to on my federal 1040 line 13.

However, the \$33,700 figure came right off a form provided me by the partnership entitled "Partner's Share of Idaho Modifications, Credits, and Taxes" under the category labeled "Idaho Special Capital Gains Treatment" for a gain on the sale of real property held for at least 18 months. Please check this form for [Redacted] No. 82-0464182 and I think you'll see what I mean.

In a letter dated April 12, 2001, the auditor acknowledged receipt of the taxpayers' protest letter and informed them that their file was being sent to the Commission's legal section for continuation of their appeal process.

The Tax Policy Specialist (specialist) sent the taxpayers a hearing rights letter on May 3, 2001, to inform them of their alternatives for redetermining their protested deficiency determination.

The Commission received a payment from the taxpayers on May 11, 2001, for \$62.

The specialist sent the taxpayers a letter on May 29, 2001, which requested a copy of the taxpayers' CG statement that they received from the partnership. The specialist also included a copy of Idaho Code section 63-3022H which is the Idaho law for reporting the deduction for capital gains.

In Mr. [Redacted] letter dated June 1, 2001, he stated, in pertinent part:

I would like to have a telephone conference with regard to the above referenced case. There is a relatively small amount of tax involved in this case and it is certainly not worth our time to meet for a hearing. . . . Also, please find enclosed a copy of Partner's Share of Idaho Modification, Credits, and Taxes, which you requested.

The form shows the amount of \$33,700 as the “Gain (loss) on sale of real property held over 18 months” under the “IDAHO SPECIAL CAPITAL GAINS TREATMENT.”

The specialist sent Mrs. [Redacted] a letter dated June 29, 2001, which stated in pertinent part:

. . . Your husband correctly reported the capital gains \$30,960 amount on your federal return. However, the same amount of \$30,960 should have been used in the calculation of your Idaho deduction for capital gains instead of the \$33,700.62 entered. Idaho Code section 63-3022H stated in pertinent part:

Deduction of capital gains. (1) If an individual taxpayer reports a net capital gain in determining taxable income, sixty percent (60%) of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income.

(2) The deduction provided in this section is limited to the amount of the net capital gain from all property included in federal taxable income. . . .

During a telephone conversation with Mr. [Redacted] the specialist was asked to contact [Redacted] (Mr. [Redacted]). Mr. [Redacted] is the accountant who prepared the partnership return.

On August 15, 2001, the specialist spoke with Mr. [Redacted] by telephone and informed him a power of attorney (POA) would be needed to discuss the taxpayers’ case. Mr. [Redacted] told the specialist that he had prepared the federal partnership return and had to manually make a special allocation of partnership gains because some of the gain was from the sale of real property that was given to the partnership by two of the partners. He said the Idaho partnership return was prepared by other persons in his office without making the special allocation. He said that, since all of the gain on the state partnership return was reported to the partners, just in the wrong allocation, the state should not require him to file amended returns. The specialist told Mr. [Redacted] he would check into his claim.

On August 16, 2001, the Commission received by fax a power of attorney for the taxpayers naming Mr. [Redacted] as their attorney in fact.

On January 18, 2002, the specialist informed Mr. [Redacted] that the Commission could not accept his position and would uphold the taxpayers' deficiency. Mr. [Redacted] said he would inform the taxpayers.

On February 27, 2002, Mr. [Redacted] informed the specialist that the taxpayers' still disagreed with the Commission's determination. Mr. [Redacted] was informed that the Commission would issue a decision in this matter.

On March 15, 2002, the specialist sent the taxpayers a letter, which stated:

In your letter dated June 1, 2001 you requested a telephone informal hearing with the Commission. If you still wish to have this telephone informal hearing, please contact me by March 25, 2002, to schedule a hearing. If I have not heard from you by that date, I will assume that you no longer wish to have a hearing with the Commission.

The taxpayer did not respond to this letter.

Idaho Code § 63-3002 states:

It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; . . .

Since the taxpayers have not provided the Commission with a contrary result to the auditor's redetermination of their income, the Commission must uphold the deficiency as asserted.

WHEREFORE, Notice of Deficiency Determination dated March 15, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

The taxpayers have paid the total amount asserted on the Notice of Deficiency Determination and, therefore, no further demand for payment is made.

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No. [Redacted]

[REDACTED][REDACTED][REDACTED]

[REDACTED][REDACTED][REDACTED]

ADMINISTRATIVE ASSISTANT 1